

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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WPS Energy Services, Inc.

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Docket No. 00-0199

Petition for certification as an alternative
retail electric supplier.

**COMMENTS AND RESPONSE
OF PETITIONER SENATOR STEVE RAUSCHENBERGER**

Senator Steve Rauschenberger, as Petitioner ("Petitioner") hereby submits the following comments for consideration by the Illinois Commerce Commission ("Commission") in the above-captioned proceeding regarding the application for a certificate of service authority as an Alternative Retail Electric Supplier ("ARES") that was filed by WPS Energy Services, Inc. ("WPS"). These comments are in response to the Commission's Order Reopening Docket No. 00-0199, dated March 16, 2001 ("2001 Order").

WPS was originally granted a certificate of service authority as an ARES by the Commission in 2000, and WPS has been operating as an ARES ever since. The 2001 Order asks whether the Commission erred in granting that certificate by finding that WPS was in compliance with section 16-115(d)(5) of the Public Utilities Act ("the Act"). Section 16-115(d)(5) of the Act ("Reciprocity Clause") provides that any applicant for an ARES certificate that is affiliated with a utility must demonstrate that "power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered..." 220 ILCS 5/16-115(d).

Petitioner has had the opportunity to review the March 27, 2001 comments jointly filed with the Commission by Representatives Kurt I. Granberg, J. Philip Novak and Vincent Persico and Senator Denny Jacobs ("Granberg *et al.*").

Petitioner's comments are submitted in response to the Commission's Order Reopening Docket No. 00-0199 regarding WPS Energy Services, Inc.'s status as an ARES and in response to the comments of Granberg *et al.*

Petitioner urges the Commission to avoid giving undue weight to representations of legislative intent and an interpretation of Section 16-115(d)(5) that is being advanced more than three years after passage of the Electric Customer Choice and Rate Relief Act of 1997 ("Customer Choice Act") that is contrary to the plain language of that Section of the Act. The comments of

Granberg *et al.* are not supported by any reference to documented legislative history. Further, the Comments of Granberg *et al.* fail to contain any discussion of the meaning of the qualifying terms "physically and economically delivered" that are contained in Section 16-115(d)(5) of the Act. In fact, Granberg *et al.* call on the Commission to simply ignore those words as if they were not in the Act at all.

It has been nearly a full year since the Commission issued its original order with respect to the certification of WPS Energy Services as an ARES. At no time since that order has any party complained to the Commission, under procedures clearly set forth in Section 16-115B(a) and (b) of the Act, that WPS Energy Services is in non-conformance with either the Act or with the conditions of its certification. Indeed, the instant proceeding itself was not initiated by the Commission pursuant to any of the Sections of the Act that separately govern the regulation of ARES. Even at this late date there are no specific allegations of non-conformance.

Petitioners seeks to remind the Commission that the General Assembly has delegated to the Commission the responsibility for the administration of the Act. To the extent that individual members of the General Assembly may disagree with the Commission's actions in administering the Act such disagreement should address, first and foremost, the plain language of the Act, of which each and every word must be given equal effect. Granberg, *et al.* take the opposite route and appear to suggest that certain words not be given effect. The Commission should be skeptical of long-delayed protests that urge the Commission to ignore certain portions of the language in the Act as being either contrary to or inconsistent with the intent of the General Assembly.

The principle of reciprocity set forth in the words of Section 16-115(d)(5) is not the absolute prohibition on ARES affiliation with non-open, non-Illinois utilities that Granberg *et al.* appear to contend. Rather, the reciprocity provision of the Act is more logical, symmetrical and attentive to actual energy market conditions. While the Act's reciprocity provision does disqualify some applicants for ARES certification whose non-Illinois utility affiliates do not provide delivery services comparable to those provided by Illinois utilities, the terms of disqualification are limited to those circumstances in which a given Illinois utility could not physically or economically deliver power and energy to the non-Illinois utility. The physical and economical test in the Act's reciprocity provision cannot be disregarded.

For example, it would make no sense to apply the reciprocity provision with respect to denial of ARES certification an affiliate of a utility in a location that could not be physically served by power and energy from the Illinois utility. Examples of such situations might include an ARES affiliate of a distribution utility in a foreign country or in Texas. In neither case could an Illinois utility physically deliver power and energy. Therefore, such an applicant would still be in full compliance with the reciprocity provision in the Act. Similarly, the Act

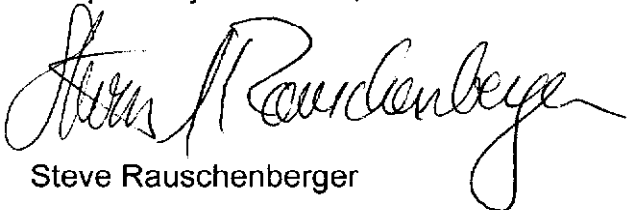
requires consideration by the Commission of whether a given Illinois utility could not economically serve even if it could do so physically.

Petitioner also calls the Commission's attention to the fact that since the passage of the Choice Act, most of the high cost utilities in the Midwest, which are concentrated in Michigan and Ohio, that would be subject to the economic test in the reciprocity provision have commenced open access under their own states' laws. In this respect, to the extent that the General Assembly intended to incentivize other states to enact measures similar in effect to that of the 1997 Choice Act, there has been considerable success.

Finally, Petitioner urges the Commission to be wary of justifications for newly advanced interpretations of the reciprocity provision or for recollections of the intent of the General Assembly in 1997. This Commission should not leave itself open to arguments that attempt to use current conditions as a rationale for action taken years before. Granberg *et al.* appear to contend that the General Assembly had in mind the forestalling of a potential California-style electric crisis when it considered the purposes of the reciprocity provision in 1997. It is simply not credible to suggest that the General Assembly had any such situation in mind – nor did the California Legislature for that matter. The issue in 1997 was a surplus of high cost generation, not an inadequate supply.

Petitioner urges the Commission, for the sake of its position as an expert and independent body, to remain attentive to its obligation to enforce the plain language of the statutes and to refrain from giving undue weight to *post hoc*, undocumented representations of legislative intent.

Respectfully submitted,



Steve Rauschenberger

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ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

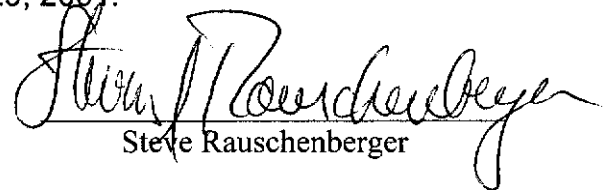
Please take note that on March 19, 2001 we filed with the Chief Clerk of the Illinois Commerce Commission, Donna Caton, the Petition to Intervene of Senator Steve Rauschenberger and Comments and Response in the above-referenced proceeding.

Dated: March 29, 2001


Steve Rauschenberger

CERTIFICATE OF SERVICE

I, Steve Rauschenberger, certify that copies of the foregoing Petition to Intervene of Senator Steve Rauschenberger and Comments and Response were served upon the parties on the attached service list via U.S. Mail from 615A, Statehouse, Springfield, IL, 62706 on March 29, 2001.


Steve Rauschenberger

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